

REMARKS

In response to the Official Action mailed December 27, 2002, Applicants respectfully request that the Examiner reconsider the rejection of the claims.

Claims 1, 3-7, 18, 20-22, 24 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Miller* (U.S. Patent 4,872,899) in view of *Dale* (Fred Dale, Special to The Star). Claims 2, 8-17, 19 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable *Miller*, in view of *Dale* (Fred Dale, Special to The Star) and in further view of *Green Light Rootone*. Applicants respectfully traverse these rejections.

Applicants respectfully submit the attached Affidavits of Dr. Don W. Smith and Professor Scott D. Russell in rebuttal to the present rejections.

In his Affidavit, Dr. Smith explains that the primary purpose of the present inventive principles is to rescue distressed trees using a combination of a fertilizer and a growth hormone. He also explains that application of the inventive principles has been very successful in meeting this stated purpose. For example, Dr. Smith notes in Paragraph 8e of his Affidavit, that over 2,000 distressed trees have been treated with a 90% success rate. The problem being addressed by the inventor, as well as the commercial success resulting from the practice of the invention, are always relevant factors in considering the nonobviousness of that invention.

Prof. Russell, in Paragraph 7 of Page 3 of his Affidavit, notes that the *Miller* reference only discloses the use of an iron compound to treat plants in a very specific situation, namely, in instances where the treated plant is situated in an iron deprived environment. In other words, the *Miller* reference does not disclose or suggest the use of a combination of a fertilizer and a growth hormone to treat plants under a wide range of stressors.

Most importantly, Applicants note that applying the method suggested by the *Dale* article are limited to the case of transplanting young, container grown trees, rather than treating trees *in situ*. Moreover, Prof. Russell points out in the Paragraph Number

2 on Page 2 of his Affidavit, that *application of the methods described in the Dale reference would actually kill mature trees.*

With respects to the Green Light Rootone, Prof. Russell notes, in the Paragraphs numbered 4 and 5 on Page 2 of his Affidavit that there is no teaching or suggestion anywhere in the art to use the Rootone product on adult planted trees.


No new matter has been added.

Applicants respectfully submit that the Claims as they now stand are patentably distinct over the allowed Claims of the parent application and the art cited during the prosecution thereof.

With the addition of no new claims, no additional filing fees are due. However, Applicants respectfully request a Three Month Extension of Time to File Response as seen on the attached SB/22 Extension Request Form along with Extension Request fees in the amount of \$465.00 attached with Fee Transmittal SB/17 form which also confirms SMALL ENTITY STATUS. Also, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account Number 23-2426 of WINSTEAD SECHREST & MINICK P.C.

If the Examiner has any questions or comments concerning this paper or the present application in general, the Examiner is invited to call the undersigned at (214) 745-5374.

Respectfully submitted,
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